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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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YOUNG & THOMPSON			SMITH, TERRI L	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

AA

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/559,940	MILLS ET AL.	
	Examiner Terri L. Smith	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 08 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 33-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) 33-63 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 December 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- |                                                                                                                                  |                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                             | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-8-05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|                                                                                                                                  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 08 December 2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the incorrect inventor name is listed for U.S. Patent 6,073,085. It has been placed in the application file, but the information referred to herein above has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

### ***Specification***

2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the Applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, do not include the heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.

- (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A “Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

*Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference character 7 in Figs. 8–10. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office Action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the Examiner, the Applicant will be notified and informed of any required corrective action in the next Office Action. The objection to the drawings will not be held in abeyance.

*Claim Objections*

4. Applicant’s amended claim 60 filed on 08 December 2005 is non-compliant because it fails to meet the requirements of 37 CFR § 1.121. The claim has not been provided with the

proper status identifier, and as such, the individual status of the claim cannot be identified. The status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Cancelled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended). Applicant is required to correct the claim identifier of the stated claim.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the Applicant regards as his invention.

6. Claims 33–63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In claim 33, the phrase “capable of” is vague and indefinite. It has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires that ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 Additionally, “a processor” and “a common processor” are inferentially included and it cannot be determined if the processors are being positively recited or functionally recited. To positively claim the elements, it is suggested to first positively recite the processors. Otherwise, functional language such as “for” or “adapted to be” should be used. Finally, this claim recites the limitation “the results”. There is insufficient antecedent basis for this limitation in the claim.

In claim 34, the phrase “activated independently” is incomplete for omitting an element to activate the self tests. Additionally, this claim recites the limitation “the centralized processor”. There is insufficient antecedent basis for this limitation in the claim.

In claim 35, “data,” “an indicator” and “a processor” are inferentially included and it cannot be determined if the elements are being positively recited or functionally recited. To positively claim the elements, it is suggested to first positively recite the elements. Otherwise, functional language such as “for” or “adapted to be” should be used. Additionally, the term “it” is vague. It cannot be determined what is being referenced by “it.” Further, “transmitted” is incomplete for omitting an element to transmit.

In claim 36, the phrase “said medical device … status of the components” is vague. It is unclear if the medical device components and the indicator are being positively recited or functionally recited. Additionally, the phrase “characterized in that” is vague and indefinite. It is suggested to use the phrase “further comprising:” instead. Furthermore, “which can” is vague because it is unclear if this functional language or a positive recitation. The terms “data,” “an indicator” and “a processor” are inferentially included. Moreover, the term “it” is vague. It cannot be determined what is being referenced by “it.” Finally, “transmitted” is incomplete for omitting an element to transmit.

In claim 37, the phrase “the one or more components” is vague. The components have only been functionally recited and therefore, cannot be further limited.

In claim 38, the phrase “a plurality of one or more components” is vague. The components have only been functionally recited and therefore, cannot be further limited. Additionally, the phrase “a self test unit” is vague. Is this the same self test unit as the one above or is it a different one?

Claim 39 recites the limitation “the data”. There is insufficient antecedent basis for this limitation in the claim. Additionally, “a single data link” is inferentially included.

Claim 40 recites the limitations “the data” and “the summator.” There is insufficient antecedent basis for these limitations in the claim. Additionally, “a plurality of separate data links” is inferentially included.

In claim 43, “a main processor” is inferentially included.

In claim 44, the phrase “data from the, or each component” is confusing. It is unclear what is being claimed. Where or what is the data from?

In claim 45, the term “ $x^2$ ” is indefinite. It is unclear what value “ $x^2$ ” is supposed to be.

In claim 46, the phrase “making up an AED” is vague. Is an AED being positively recited? Additionally, the terms “electrode condition,” “battery on charge,” “system condition” and “modem condition” are vague. It is unclear if these elements have been positively recited.

In claim 47, “triggered by a test” is incomplete for omitting an element to trigger a self test for a component.

In claim 48, “digital signal processor” is inferentially included.

In claim 49, “a server” and “base station” are inferentially included.

In claim 50, “a base station” is inferentially included.

Claim 51 recites the limitations “the voltage” and “the circuitry.” There is insufficient antecedent basis for these limitations in the claim. Additionally, “the circuitry” is inferentially included.

In claim 52, the phrase “a first voltage of between” is confusing. The limitation only specifies one voltage value for the first voltage and one voltage value for the second voltage. Yet, the limitation expresses “a first voltage of between” which implies that a range of voltages should be expressed. Should there be other voltage values expressed in the claim?

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Claim 53 recites the limitations “the indicator” and “the summator.” There is insufficient antecedent basis for these limitations in the claim. Additionally, “results” is inferentially included.

Claim 54 recites the limitations “the indicator” and “the summator.” There is insufficient antecedent basis for these limitations in the claim

Claim 55 recites the limitations “the number of pulses” and “the summator.” There is insufficient antecedent basis for these limitations in the claim.

Claim 56 recites the limitation “the number of pulses.” There is insufficient antecedent basis for this limitation in the claim.

Claim 57 in its entirety is confusing. What is the self test system testing the condition of? The claim appears to have left out portions of the claimed limitations.

Claim 59 recites the limitation “the indicator.” There is insufficient antecedent basis for this limitation in the claim.

Claim 60 recites the limitation “the indicator.” There is insufficient antecedent basis for this limitation in the claim.

Claims 61–63 all need to be in the active voice.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 33–45, 47, 51, 53–55 and 58–63 are rejected under 35 U.S.C. 102(b) as being anticipated by Ochs et al., U.S. Patent 5,899,925.

9. Regarding claims 33–40, 51, 53–55 and 58–63, Ochs et al. disclose a plurality of components ... carrying out a self-test routine ... (e.g., FIGS. 1–2; column 3, lines 32–37 and 60–67; column 4, lines 1–8, 13–28, 35–37 and 41–46; column 8, lines 19–22) and

activated independently of operation of a medical device and not by a signal from a processor associated with a medical device (column 3, line 60–column 4, line 5, where each of the various tested defibrillator components may itself contain circuitry (not shown) for testing and communicating component status ... for example, the ECG circuit 24 may include a signal generator for generating test ECG signals where it is the Examiner's position that this operation is activated independently of operation of a medical device and not by a signal from a processor associated with a medical device.) Additionally, it is the Examiner's position that the system monitor 12 as taught in column 4, lines 14–19 also meets this claimed limitation in that it is "not a centralized processor" (see specification page 2, lines 10–11) like CPU 16, and it is activated by its own separately dedicated power supply (It is noted that the claim states "not by a signal from a processor" rather than "not by a signal from 'any' processor");

a summator (combination of elements 26-gate array, 30-removable memory and 12-system monitor) and an indicator (e.g., elements 36 and 40-LCD).

10. With respect to claim 62, Ochs et al. disclose; self test is aperiodic (claim 62) (e.g., TITLE; ABSTRACT, LINES 1–3).

11. Regarding claims 41–45 and 47, Ochs et al. disclose a summator is a micro-controller (claim 41) (e.g., column 4, line 23), includes a subtractor component (claim 42) (e.g., column 7,

lines 1–2) and is part of a main microprocessor (claim 43) (e.g., column 4, lines 37–39); a signal comprising a number of pulses (claim 44) as a prime number (claim 45) (e.g., column 3, line 65–column 4 line 5 where the prime number is 1; column 6, lines 35–37 where it is the Examiner’s position that the test load circuitry in column 3, line 67 is the load being referenced in column 6, line 37 which is part of the summator as defined herein above and is the load to which the pulse is being delivered); a self test is triggered by a test having been carried out on another component (claim 47) (e.g., column 5, lines 53–56; column 4, lines 29–31).

12. Claims 33–43, 51, 53–56 and 58–63 are rejected under 35 U.S.C. 102(b) as being anticipated by Powers et al., U.S. Patent 5,879,374.

13. Regarding claims 33–40, 43, 53–55 and 58–63, Powers et al. disclose a plurality of components ... carrying out a self-test routine ... (e.g., FIGS. 1–4 and 6; column 1, lines 14–15; column 3, lines 26–50 and 59–65) and

activated independently of operation of a medical device and not by a signal from a processor associated with a medical device (e.g., FIGS. 3 and 7; column 4, lines 44–46; column 9, lines 4–21 where it is the Examiner’s position that the signals through the electrodes 40 that are sent to the system gate array 56 which causes the signal generator 94 to emit a test signal is an example of two different components (electrodes and relay) activated independently of operation of a medical device and not by a signal from a processor associated with a medical device.) (It is noted that the claim states “not by a signal from a processor” rather than “not by a signal from ‘any’ processor”);

a summator (combination of elements 56-gate array, 30-removable memory and 42-system monitor; column 7, lines 21–35) and an indicator (e.g., elements 83 and 58-LCD).

14. Regarding claims 41 and 42, Powers et al. disclose a summator is a separate counter/adder component (claim 41) and includes a subtractor component (claim 42) (e.g., column 3, lines 54–56).

15. With respect to claims 51 and 56, Powers et al. disclose testing a voltage across substantially all of the circuitry (claim 51) (e.g., FIG. 8; column 11, lines 8–18); set parameters to provide an indication of whether one or more components are functioning as required (claim 56) (e.g., column 7, lines 29–30).

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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18. Claims 46, 48–50 and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over Ochs et al.

19. Regarding claims 46 and 52, Ochs et al. disclose the essential features of the claimed invention except for a number of pulses = 1024 pulses (claim 46) and a first voltage of between 450V or a second voltage of 40V (claim 52). However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a number of pulses = 1024 pulses (claim 46) and a first voltage of between 450V or a second voltage of 40V, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). (See MPEP 2144.05).

Additionally, it is well known in the art that pulses = 1024 pulses because this is a standard pulse numbering system for digital based processing devices and a first voltage of between 450V or a second voltage of 40V to ensure that the device will apply the therapy required to save a patient's life.

20. With respect to claims 48–50, Ochs et al. disclose the essential features of the claimed invention except for a digital signal processor (claim 48) and a signal from a server or base station (claims 49 and 50). However, it is well known in the art to use a digital signal processor because it provides accurate, reliable and precise signal data for optimum therapy administration and a signal from a server or base station to provide reliable and safe device manipulation from a remote location.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the inventions of Ochs et al. to include a digital signal

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processor because it provides accurate, reliable and precise signal data for optimum therapy administration and a signal from a server or base station to provide reliable and safe device manipulation from a remote location.

***Conclusion***

21. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terri L. Smith whose telephone number is (571) 272-7146. The Examiner can normally be reached on Monday – Friday between 7:30 a.m. - 4:30 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



TLS

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GEORGE R. EVANISKO  
PATENT EXAMINER

